

No. 16271

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United States  
Court of Appeals  
for the Ninth Circuit

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MARY OZEROFF,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Eastern District of Washington,  
Southern Division.

FILED

MAR 11 1959

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Appellee.





United States District Court for the Eastern District of Washington, Southern Division

Civil No. 1287

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY OZEROFF,

Defendant.

### COMPLAINT

Comes now the Plaintiff United States of America by William B. Bantz, United States Attorney for the Eastern District of Washington and Robert L. Fraser, Assistant United States Attorney for said District, and for cause of action against the above Defendant alleges as follows:

#### I.

That the above-named Plaintiff at all times herein mentioned, through the Atomic Energy Commission, its agency, was the owner and manager of the premises hereinafter described, located in Richland, Washington, under the authority of the Atomic Energy Act of 1954, Public Law 703, 83rd Congress, Chapter 1073, Second Session, and specifically Subsections 161e and 161g thereof.

#### II.

That since the 1st day of May, 1957, the Defendant has held and resided in that certain dwelling and premises, owned by Plaintiff, known as 1525

Hains Street, Richland, Washington, without a lease and without the Plaintiff's permission.

### III.

That since the 1st day of May, 1957, the reasonable value of said dwelling, premises, and appliances therein is and has been \$64.98 per month, but Defendant has paid no rental whatsoever therefor.

### IV.

That during the month of May, 1957, the Plaintiff, with an expectation known to Defendant that Plaintiff would be paid therefor as part of the rent, supplied Defendant at the said premises with domestic water of the reasonable value of \$1.50.

### V.

That Defendant paid nothing for the domestic water furnished as stated in Paragraph IV. [1\*]

### VI.

That on the 28th day of October, 1957, Plaintiff herein caused to be served upon the Defendant a notice requiring said Defendant to vacate said premises at the expiration of the 20th day of November, 1957.

### VII.

That in compliance with the statute of the State of Washington, to wit: RCW 59.12.040, the notice referred to in Paragraph VI was served upon Defendant at the dwelling described in Paragraph II

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

by affixing a copy of said notice in a conspicuous place, to wit: on the door of said dwelling, and by sending through the mail with proper postage prepaid a copy addressed to Defendant at 1525 Hains Street, Richland, Washington; that neither Defendant nor any other person was found at the said premises at the time of said service.

VIII.

That despite the notice to vacate said premises as hereinbefore set forth, Defendant has failed and refused to vacate as demanded.

IX.

That the Defendant is now unlawfully in possession of said premises and is guilty of unlawful detainer.

Wherefore, Plaintiff prays for judgment against said Defendant as follows:

1. That said Defendant be adjudged guilty of unlawful detainer of said premises.

2. That a writ of restitution be issued ousting the Defendant from the possession of said premises and restoring possession thereof to this Plaintiff.

3. That the Plaintiff have judgment against this Defendant for unpaid rental on said premises from May 1, 1957, to the date of eviction at the rate of \$64.98 per month, for \$1.50 as the fair value of domestic water furnished, and for Plaintiff's costs and disbursements herein.

4. For such other and further relief as to the court may seem just and proper.

/s/ WILLIAM B. BANTS,  
United States Attorney;

/s/ ROBERT L. FRASER,  
Assistant United States At-  
torney.

[Endorsed]: Filed December 4, 1957. [2]

[Title of District Court and Cause.]

### ANSWER

Comes Now the defendant and by way of answer to the complaint of the plaintiff admits, denies and alleges as follows:

#### I.

Answering Paragraph I defendant admits the same except that it denies that The United States of America, plaintiff, was the manager of said premises.

#### II.

Answering Paragraph II, defendant denies the same, except defendant admits that she resides at that certain dwelling known as 1525 Haines Street.

#### III.

Defendant denies each and every allegation contained in Paragraph III of plaintiff's complaint, and alleges that the rental has been repeatedly offered to the plaintiff and plaintiff has refused same.

IV.

Answering Paragraph IV, defendant admits the same.

V.

Answering Paragraph V defendant denies the same.

VI.

Answering Paragraph VI defendant denies the same.

VII.

Answering Paragraph VII, defendant denies the same.

VIII.

Answering Paragraph VIII defendant denies the same, except that defendant admits she still continues to reside at said premises. [4]

IX.

Answering Paragraph IX of plaintiff's complaint, defendant denies the same.

Wherefore having fully answered, defendant prays that the complaint of the plaintiff be dismissed.

POWELL & LONEY,

By /s/ DEAN LONEY,

Attorney for Defendant.

[Endorsed]: Filed December 12, 1957. [5]

[Title of District Court and Cause.]

### REQUEST FOR ADMISSIONS

Comes now the United States, Plaintiff in the above-entitled action, and under Rule 36, Rules of Civil Procedure, requests Defendant within 10 days after service of this request to make the following admissions for the purposes of this action only and subject to all pertinent objections to admissability which may be interposed at a future hearing or trial:

1. (a) That she is now living in the premises known as 1525 Hains Street, Richland, Washington, without a lease.

(b) That she has never held a lease of those premises.

2. That the said premises are owned by the United States of America.

3. (a) That about October 28, 1957, she returned to 1525 Hains Street, Richland, Washington, after being absent therefrom and then found affixed to the front door at those premises a document requiring her to vacate the premises in November, 1957.

(b) That about October 29, 1957, she received through the United States mail a document requiring her to vacate the premises in November, 1957.

4. That she did not comply with the requirement of the documents described in Paragraph 3, above.

5. That the document attached to this request as "Exhibit A" is genuine and that it is a true copy of the documents described in Paragraph 3, above.

6. That since May 1, 1957, and at all times since that date the reasonable rental value of the dwelling, premises and government-owned appliances at 1525 Hains Street, Richland, Washington, is and has been \$64.98 per month. [7]

7. That during the month of May, 1957, the Plaintiff furnished to her domestic water at the reasonable value of \$1.50, for which she has paid nothing.

Dated April 21, 1958.

/s/ ROBERT L. FRASER,

Assistant United States Attorney.

[Endorsed]: Filed April 24, 1958. [8]

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[Title of District Court and Cause.]

INTERROGATORIES TO BE ANSWERED  
BY DEFENDANT

Comes now the United States, Plaintiff in the above-entitled action, and under Rule 33, Rules of Civil Procedure, requests the Defendant to answer the following interrogatories:

1. Are you now living on the premises known as 1525 Hains Street, Richland, Washington?

2. If the answer to Question 1 is "Yes," does anyone else live there with you?

3. If the answer to Question 1 is "Yes," when did you begin living there?

4. If the answer to Question 1 is "Yes," was there any other person resident in those premises when you began living there?

5. If the answer to Question 4 is "Yes," what was his name? (If there was a family group, give only the name of the person who was husband and father.)

6. If the answer to Question 5 is the name of a person, what relationship, if any, did he bear to you?

7. Do you know whether the person, if any, named in your answer to Question 5 held a lease on the premises at 1525 Hains Street, Richland, Washington, when you started living there?

8. If the answer to Question 7 is "Yes," did that person hold such a lease or did he not?

9. If the person, if any, named in your answer to Question 5 is no longer living at 1525 Hains Street, Richland, Washington, and he now lives elsewhere, when did he move from 1525 Hains? [9]

10. (a) Have you ever received from anyone a document called a "Lease," purporting to give you the right to reside in the premises at 1525 Hains?

(b) Have you ever signed such a document?

11. (a) In your own behalf, have you ever paid rent for the premises at 1525 Hains Street?



(b) If so, what was the date of the last payment?

12. (a) Are you employed?

(b) If so, where and by whom?

13. Have you any children or dependents living with you?

14. What is your marital status?

Dated April 21, 1958.

/s/ ROBERT L. FRASER,

Assistant United States Attorney.

[Endorsed]: Filed April 24, 1958. [10]

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[Title of District Court and Cause.]

### ANSWERS TO INTERROGATORIES

Comes now the Plaintiff in the above-entitled action, and by its officer and agent, Norman G. Fuller, answers as follows the interrogatories submitted by the Defendant:

1. At all times material to this action, the United States has been preparing to offer, or has been offering, to sell certain houses to persons entitled to residential occupancy of them. The United States has not offered to sell houses to people living therein without regard to whether they are entitled to residential occupancy. The first offerings of such houses were made on June 12, 1957.

2. The house occupied by the Defendant is known as a "Type H," and is the only Type H house that has not been offered for sale. A small number of other letter-designated types of houses which are of comparable quality, and which in that sense are of the same "kind" as the Type H, have also not been offered.

3. The Plaintiff has no knowledge sufficient for it to form a belief about whether Defendant has at all times or at any time been willing and able to purchase the house, but in Plaintiff's opinion she is not and never has been qualified or entitled to do so. However, Defendant has on numerous occasions expressed a desire to purchase.

4. Although her intention was not clear, Plaintiff believes that Defendant meant to offer to make all rental payments to the Plaintiff and, therefore, answers that she did so offer. Plaintiff refused to accept the offer and such payments.

5. The Defendant's last unequivocal offer to pay rent was made at Richland, Washington, on June 3, 1957, when the General Electric Company as Plaintiff's agent received from the Defendant through the United States mail a check in an amount equal to the reasonable monthly rental value of the house. However, as indicated in Answer number 4, Plaintiff believes that Defendant intended her offer [12] to make all rental payments to be a continuing one. The check mentioned in this Answer was returned to Defendant on June 11, 1957; the check was rejected and the offer was and is being rejected be-

cause Defendant was not and is not an acceptable tenant for the house.

6. Under the Atomic Energy Community Act of 1955 and under the Atomic Energy Commission's regulations, promulgated pursuant to that Act in accordance with the Administrative Procedures Act and published in Title 10 CFR, Part 130, Plaintiff has refused to offer to sell the house to Defendant. A copy of the regulations is attached.

7. Yes.

8. Plaintiff estimates that there have been not less than 100 such sales. It is impracticable to state in detail each of the circumstances under which each was made and to do so would be repetitive so far as is material. Single persons who purchased homes on the Hanford project have in every case been entitled at the time of sale, in accordance with a lease, to residential occupancy of the home each respectively purchased.

9. Yes.

10. Yes.

UNITED STATES OF  
AMERICA,

By /s/ NORMAN G. FULLER,  
Director, Community Division, Hanford Operations  
Office, Atomic Energy Commission.

Duly verified.

[Endorsed]: Filed May 13, 1958. [13]

[Title of District Court and Cause.]

ANSWER TO REQUEST FOR  
ADMISSIONS

Comes Now the defendant and in response to plaintiff's request for admissions admits and denies as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. No documents attached.
6. Admitted.
7. Admitted, although defendant states that she has always at all times been willing and able and has offered to pay the same.

POWELL & LONEY,

By /s/ DEAN LONEY,

Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed May 21, 1958. [38]

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[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES

Comes now the defendant and by way of answer to the interrogatories submitted by the plaintiff states as follows:

1. Yes.

2. No.
3. Approximately October, 1951.
4. Yes.
5. William John Ozeroff.
6. Brother.
7. Yes.
8. Yes, he did.
9. Approximately December, 1956.
10. No.

11. (a) Yes.

(b) This defendant has continually offered to pay said rental. The last rental check the plaintiff accepted covered the period to April, 1957.

12. (a) Yes.

(b) Richland Laundry at Richland, Washington.

13. No.

14. Unmarried.

POWELL & LONEY,

By /s/ DEAN LONEY,

Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed May 21, 1958. [39]

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[Title of District Court and Cause.]

WRITTEN INTERROGATORIES TO BE  
ANSWERED BY PLAINTIFF

Comes now the defendant in the above-entitled action and under Rule 33, Rules of Civil Procedure,

requests the plaintiff to answer the following interrogatories:

1. That at all times material to this action the United States has been in the process of offering for sale homes to residents therein.

2. That the house occupied by the defendant has never been offered for sale although it is the only one of its kind not so offered.

3. That at all times material the defendant has been willing and able to purchase said house, and in fact has requested same on many occasions.

4. Did the defendant offer to make all rental payments to the plaintiff, and if so, did the plaintiff refuse to accept the same?

5. If the answer to the above question is yes, please state the time and place the last offer of payment was made, and the circumstances under which it was rejected.

6. Please state under what rules and regulations the plaintiff has failed to or refused to offer the house to the defendant for purchase, and attach copies of the regulations which plaintiff deems material thereto.

7. Have any other homes on the Hanford Project been sold to persons who were single at the time of sale?

8. Please state in detail each of the circumstances under which such sale was made.

9. Please state whether or not the plaintiff still refuses to sell the house to the defendant.

10. Please state whether or not the plaintiff is willing, ready and able to sell the house to other persons.

POWELL & LONEY,

By /s/ DEAN LONEY,

Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed May 21, 1958. [41]

In the District Court of the United States for the  
Eastern District of Washington, Southern Di-  
vision

Civil No. 1287

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY OZEROFF,

Defendant.

Before: Hon. Sam M. Driver, Judge, without a  
jury.

RECORD OF PROCEEDINGS

AT THE TRIAL

June 11, 1958

Appearances:

For the Plaintiff:

WILLIAM B. BANTZ,

U. S. District Attorney;

ROBERT L. FRASER,

Assistant U. S. Attorney.

For the Defendant:

DEAN LONEY, Appearing for  
POWELL & LONEY.

Be It Remembered:

That the above-entitled action came regularly on for trial and determination on June 11, 1958, before the Honorable Sam M. Driver, Judge, without a jury, in the District Court of the United States, for the Eastern District of Washington, Southern Division, Yakima, Washington, the plaintiff appearing by Robert L. Fraser, Assistant U. S. District Attorney; the defendant appearing by Dean Loney, for Powell & Loney; and all parties having announced that they were ready for trial;

Whereupon, the following proceedings were had, to wit:

The Court: In this case of the United States against Mary Ozeroff I took time yesterday afternoon to go through the file again and read all these requests for admissions [48] and requests for interrogatories, and it appears to me that the facts are pretty well laid out and agreed upon. It doesn't seem to me that there was any factual issue that would require a trial. It seems to me that the case could be disposed of on a Motion for Summary Judgment, and I would suggest that you consider arguing the case on that motion, first, at any rate. If either of you have an idea that there is a factual conflict here, I would like to know what it is so that we won't



waste any time on the Motion for Summary Judgment. If there isn't any dispute on the facts, why, it would serve no purpose to have testimony. You might just as well decide it on the motion.

Mr. Fraser: Your Honor, after examining the files and comparing the admissions against the complaint, the only facts which I find were admitted were the notice which the AEC gave Miss Ozeroff last year. There was no twenty-day notice.

The Court: I notice here in one of your requests for admissions you ask her to admit the genuineness of the motion attached hereto. I couldn't find it, anyway, if you haven't got your notice, I wonder if it could be agreed what the formal notice was?

Mr. Loney: Counsel has the notice. There is one thing about the notice that I might point out to your Honor, we don't deem the notice sufficient. If counsel is relying [49] on the Washington law relating to unlawful detainer, we don't deem the notice to be sufficient. I am sure that I can agree on it.

The Court: All right.

Mr. Fraser: I think the request showed, your Honor, that the notice was mailed to Miss Ozeroff and, also, that it was affixed to her dwelling house. We would have testimony, of course, that there was nobody there, that she is the only one who resides there, that there was nobody there when they went out there and, according to the statute, they can affix it to the house or leave it with a person of suitable age and discretion.

The Court: Well, if you can't reach an agreement on the motion, I think you had better put on

your proof here and then you can still take the agreed facts here as to the rest of the issues.

Mr. Loney: My client tells me that this is the same or a very similar notice.

Mr. Fraser: Well, I would have this marked.

The Court: As I understand it, your questioning of the sufficiency of the notice, it is based upon its contents rather than the method of service?

Mr. Loney: Yes, sir, I have no argument about that.

The Court: I think this should be identified in some way. [50]

Mr. Fraser: I have a witness here.

The Court: Well, I think it should be offered as an exhibit, it would be 1, I suppose?

The Clerk: Yes, Plaintiff's No. 1.

Mr. Fraser: Plaintiff's No. 1?

(Whereupon, said document was marked Plaintiff's Exhibit No. 1 for identification.)

Mr. Loney: I make no objection to it.

The Court: All right, it may be admitted, then, in evidence.

(Whereupon, said notice was admitted in evidence as Plaintiff's Exhibit No. 1.)

PLAINTIFF'S EXHIBIT No. 1

October 28, 1957.

Miss Mary Ozeroff,  
1525 Hains,  
Richland, Washington.

Dear Miss Ozeroff:

The General Electric Company, as agent for the Atomic Energy Commission, hereby notifies you to quit and vacate the premises known as 1525 Hains, Richland, Washington, at the expiration of November 20, 1957. If you have not quit the designated premises at the expiration of November 20, 1957, our principal, the Atomic Energy Commission, intends to take appropriate legal action to secure possession.

Very truly yours,

GENERAL ELECTRIC  
COMPANY,

By /s/ E. R. BARKER,  
Supervisor, Residential  
Property.

Admitted in evidence June 11, 1958. [75]

## Plaintiff's Case in Chief

## SCOUT REED

called and sworn as a witness on behalf of the plaintiff, testified as follows:

## Direct Examination

By Mr. Fraser:

Q. Your name is Scout Reed and you reside at Richland, don't you, Mr. Reed?

A. I live in Richland, I am Housing Officer for AEC.

Q. What is that job?

A. Well, the AEC is divided into several divisions, one of which is a community division and the Housing Officer is one of the branches of that division. [51]

Q. In other words, it is your job to regulate the housing and put tenants in and take care of the others?

A. That is true.

Q. Mr. Reed, with reference to 1525 Hains Street, I am assuming that you are familiar with this controversy with Miss Ozeroff?

A. I am.

Q. Does the United States Government or, rather, does the AEC manage the property at 1525 Hains Street?

A. That is right, it does.

Q. And the United States has actual title to the property?

A. That is true.

Q. Now, with reference to Miss Ozeroff, can you state of your own personal knowledge whether or not she has resided there since April, 1957?

A. Yes, she has.

(Testimony of Scout Reed.)

The Court: What is the address there?

Mr. Fraser: 1525 Hains, that is (spells) H-a-i-n-s.

The Court: That is a dwelling house?

A. That is a dwelling house unit.

The Court: And lot?

A. That is right.

The Court: As I gather here from going through the file, whatever the legal points or issues may be, the real [52] basis of this controversy, as I understand it, is not, do you pronounce that "Oh-zer-off"? Ozeroff, well, I was right the first time, is it Miss Ozeroff? The controversy isn't the failure of Miss Ozeroff to pay rent, so much as it is that she wants to buy this unit and the Government, or AEC or General Electric, or whoever has charge of the thing, will not sell it to her and she is perfectly willing to pay the rent on the basis that they are selling other units down there, but the Government takes the position that she isn't able to buy, isn't that the controversy?

Mr. Loney: It goes beyond that, not only a controversy whether she could purchase but whether or not she is eligible for a rental lease which she has never had.

The Court: I think it is conceded, or stated in the answer to the interrogatories, that she has admitted that she has no written lease, at any rate, and has never had a written lease, is that correct?

Mr. Loney: That is right, your Honor.

Q. (By Mr. Fraser): Now, since April, 1957, has she paid any rent?

A. No, because we have asked the General Electric Company not to collect it.

(Testimony of Scout Reed.)

Q. In other words, she has offered to pay rent but you would not accept it?

A. Checks have been returned. [53]

Q. Now, I want to make some inquiry into the purchase of the house, you are familiar with, is it, Public Law 220? A. 221.

Q. Public Law 221? Is Miss Ozeroff eligible under Public Law 221 to buy the house she is in?

Mr. Loney: Well, that is calling for a conclusion.

The Court: I think that is calling for a conclusion. I think the Court would have to decide, your regulations are set out in here, aren't they attached to your answer to the interrogatories? Part 130 of Priority Regulations of September 30 of 1956?

A. That is true.

The Court: I am taking this on a rather informal basis, it is before the Court here. Why do you think she isn't eligible? She was living with her brother who was eligible to rent?

A. He would have been eligible to have stayed.

The Court: He left and she stayed on in the unit?

A. And he was told at the time that he was served notice that if he came back in a given length of time, he would be eligible to stay in the house.

The Court: Do they have to work for General Electric?

A. No, they have to be project-connected, which she is. She works at the Richland Laundry.

The Court: Is that a G. E. laundry? [54]

A. No, that is run by Harvey Stoll, who came over from Walla Walla. We could not transfer the lease on that particular house, we transfer only to

(Testimony of Scout Reed.)

wives whose husbands have died or to separated wives who work, in those two cases we transfer leases to relatives, but those are the only two cases.

The Court: Have you transferred it to anybody else?

A. No, only under those two conditions.

The Court: I don't want to be sacrilegious, but I was wondering if you couldn't get a special dispensation?

A. Well, of course, that is what we have been requested to do for some months.

Q. (By Mr. Fraser): You have offered her other houses, have you not, that is, specific houses?

A. Specific houses and type.

Q. You are familiar with Public Law 221, aren't you?

A. Yes.

Q. Can you state the order of priority for that particular house for a purchaser in order to purchase?

Mr. Loney: Excuse me, if your Honor please, I think that the law, perhaps, speaks for itself. I have it here if the Court would care to examine it. I think you are talking about the Atomic Energy Commission Act of 1955, is that it?

A. Public Law 221.

Mr. Loney: I think, perhaps, this is [55] somewhat objectionable for this man to describe it.

The Court: I think it would only be regarded as calling it to the Court's attention. I would not be bound by his testimony. If you have the Act there, I would like to see it. Will you agree that this is it?

Mr. Fraser: I haven't had a chance to see it. The only one I have seen is the one that they submitted to me. I do feel, your Honor, that this is an

(Testimony of Scout Reed.)

action in unlawful detainer. There has been no cross complaint on their part in the matter, and I feel that we might be getting beyond the realm of the action. I would, certainly, want to give Miss Ozeroff and Mr. Loney opportunity to present their side of it, no matter what. This is no action to tell the Government to sell it, it is admitted that she hasn't a lease, and I think we might be getting beyond the realm of the action, itself.

The Court: Of course, I am not just too sure now whether we are proceeding with the full-dress trial, or submitting material in supplement of the material filed here in support of the Motion for Summary Judgment. Of course, if you are moving for summary judgment any reason why it couldn't be granted, of course, clearly appears from the factual settlement in the case, of course, would have to be taken into consideration if we proceed with the full trial. I don't know, I don't think it could be said that you have been [56] misled in any way. I think it has been apparent to the Government for some time what she wants, isn't it, she wants to buy the place?

Mr. Fraser: Your Honor, let's put it this way, it was apparent to me when I received the interrogatories which Mr. Loney submitted here.

The Court: You know, I can't remember whether we had a pre-trial conference.

Mr. Fraser: No, sir, we didn't. Mr. Loney was sick at the time.

The Court: If we had had a pre-trial conference, these issues would have been set out.

Mr. Loney: Yes, your Honor, we could adjourn this matter to a pre-trial conference and, then, go



(Testimony of Scout Reed.)

into the trial. I don't see any material issues of fact about which we cannot agree.

The Court: Well, that was my thought and, of course, on Motion for Summary Judgment.

Mr. Fraser: Your Honor, I am planning on pursuing that Motion for Summary Judgment.

The Court: Yes, the thought that came to me here, is what would be the result if I deny the motion, would that be finally determinative of the action? By agreeing, it would be, of course, but if I denied it, then, what would we have to go to trial, or would the Government take that [57] decision as final? Of course, I think what you might do, Mr. Loney, I suggest here, I see no reason why you couldn't move for summary judgment on behalf of your client if you think that there is no factual controversy, why not have the motion by each party?

Mr. Loney: That is right, I was intending to do that, sir, as soon as the factual matters were in evidence sufficiently.

The Court: I don't think you need to file a formal motion here, you can make it orally in open court. Let's, first, get all the testimony in, and then we can proceed with that.

Mr. Fraser: I believe that is all with this witness, your Honor.

The Court: All right, any cross-examination, Mr. Loney?

(Testimony of Scout Reed.)

Cross-Examination

By Mr. Loney:

Q. In the matter of this disposal, Mr. Reed, the disposal under the Public Law that you mentioned, either the Act nor the regulations which you have set out in the interrogatories differentiate between this house and some other house on the project?

A. Yes, I believe they do, I think an occupant is [58] quite clear.

Q. I think you misunderstood my question, as you stated, Miss Ozeroff is a project-connected person within the meaning of the Act, is she not?

A. Well, we are not talking about Public Law 221, Public Law 221 has only to do with sale. The housing, the leasing, is under the Atomic Energy Act of 1955. When we are talking about Public Law 221, we are only talking about purchase. We are not talking about who is eligible for a lease under Public Law 221.

Q. Well, even under the Purchase-Disposal Act she is a project-connected person, isn't she?

A. That is true, that is true.

Q. And neither the law nor the regulations promulgated under the law differentiate between the house at 1525 Hains and the house, for example, on Jadmon, both of them being single dwellings, there is no differentiation made, is there?

A. There is, it is true that a project-connected person who is eligible to buy one house would normally be eligible to buy another one, that is true.

(Testimony of Scout Reed.)

Q. And you mentioned earlier that other housing had been offered Miss Ozeroff and this other housing was in the form of pre-fabs, and she was offered leases on this other housing? [59]

A. Pre-fabs, or a duplex.

Q. Now, Miss Ozeroff was eligible for a lease from the General Electric Company, acting for General Electric Company, is that not right?

A. Yes, on the master list.

Q. And the reason you couldn't give her another house for this one is just because of the difference in the house not spelled out in the Act?

The Court: I don't get that.

Q. (By Mr. Loney): The pre-fab house they would lease to her and this house they would lease to her?

A. This is because of housing eligibility regulations, which you are quite right, is not part of any statute.

Q. The houses that were offered to her were offered to her with an opportunity to buy rather than an opportunity to rent?

A. If she had moved at the time we first encouraged her, she would have been able to purchase.

Q. Weren't they duplexes in which there would be a senior tenant?

A. Not necessarily, there could have been but, in all probability, she would have had a chance to buy either a duplex and, certainly, a pre-fab.

Mr. Loney: No further questions, your Honor.

The Court: Is that all from this witness? [60]

Mr. Fraser: That is all.

(Witness excused.)

Mr. Fraser: I assume, Mr. Loney, you admit this was served properly and your only objection goes to the contents of it?

The Court: That is what I understood him to say.

Mr. Fraser: Well, then, I can't see what other witnesses we would have, your Honor. We would rest on summary judgment.

The Court: Do you wish to put on anything?

Mr. Loney: I might ask counsel if he will stipulate to certain facts.

The Court: All right.

Mr. Loney: Would you stipulate that if Miss Ozeroff were called to the stand she would testify that she was ready, willing and able to purchase this house, should it be offered for sale?

Mr. Fraser: I think I would agree with that, I wouldn't have any controversy with it, anyway.

Mr. Loney: I, really, can't think of anything else material.

The Court: I see, and you have nothing further?

Mr. Fraser: No, your Honor. The requests plus that covers everything, and the exhibit.

The Court: Yes. [61]

(Plaintiff rests.)

The Court: Well, as I understand it, you are moving for summary judgment in behalf of the defendant?

Mr. Loney: Yes, your Honor.

The Court: I think I will let you take a short recess here and let you organize your argument. We should finish this by noon, anyway, can't we?

Mr. Loney: Yes, your Honor.

The Court: I will take a short recess for ten minutes.

(Whereupon, a recess was taken for a period of ten minutes.)

(Defendant rests.)

(Closing argument of counsel.)

The Court: Well, I will assume that the pleadings have been amended to conform to the proof so that that remedy would be available for you, if justified. I think that [62] the case should be settled now. In a case of this character, certainly, there should not any additional time nor expense be expended on it. Mr. Fraser?

(Closing argument of plaintiff.)

### Oral Opinion of the Court

The Court: I think I have indicated here in my remarks on the bench that I have genuine sympathy for Miss Ozeroff. I know what a home means to people from my own experience and observation, and I wish that there was some way that I could dispose of this case in her favor. Unfortunately, I just don't believe there is.

In the first place, I think I should give some con-

sideration to the administrative interpretation of these regulations, the interpretation placed upon them by the people who have the responsibility of administering them, and I have no reason to believe that they are not acting objectively and impersonally and what they think is in accordance with the regulations here. Aside from that, I think that the regulations, which have the force of a statute, do not give Miss Ozeroff here a priority and, if that is the case, of course, why, there is only one thing that she can do and that is to pay this rental and try to make the best deal she can on some other house.

So far as the defect in the notice is concerned, I think that there is substantial compliance here and I feel [63] that since I am making the decision that I am on the merits here, it wouldn't serve any useful purpose, certainly, for Miss Ozeroff to require the Government to serve another notice on her and come back here in a month or two months with another trial, and I believe, from a practical standpoint, it is better for all concerned to take the position that there has been substantial compliance here and have judgment for the plaintiff. Of course, you are not entitled to an attorney's fee here and the costs are not considerable, I presume?

Mr. Fraser: No, sir, the only thing we will ask for is the rent which can be mathematically computed from May 1st to date, plus our costs, and that will be all.

The Court: I see.

Mr. Loney: We have offered to pay the rent, if

your Honor please, and have the check made payable here.

The Court: I think in view of the fact that Miss Ozeroff has agreed to pay the rental here, there shouldn't be any interest paid. I think if she just pays the principal of the rental, that will be sufficient.

Mr. Fraser: That is perfectly all right with us, your Honor.

The Court: The court will adjourn, then, until tomorrow morning at ten o'clock.

(Whereupon, court was adjourned until ten o'clock a.m. on June 12, 1958.)

[Endorsed]: Filed October 2, 1958. [64]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This matter coming on for trial before the above-entitled Court on the 11th day of June, 1958, and the plaintiff being represented by William B. Bantz, United States Attorney for the Eastern District of Washington, and Robert L. Fraser, Assistant United States Attorney for said District, and the defendant being represented by Dean Loney, attorney of record; and the evidence having been taken, the Court from the pleadings and evidence introduced makes the following:

## Findings of Fact

## I.

That the above-named plaintiff, at all times material to this action, through the Atomic Energy Commission, its agency, was the owner and manager of that certain dwelling unit located at 1525 Hains Street, Richland, Washington, under the authority of the Atomic Energy Commission Act of 1954, Public Law 703, 83d Congress, Chapter 1073, 2d Session, and specifically Subsections 161(e) and 161(g) thereof.

## II.

That since the first day of May, 1957, the defendant has held and resided in that certain dwelling and premises, owned by the plaintiff, known as 1525 Hains Street, Richland, Washington, without a lease and without plaintiff's permission.

## II.

That since the first day of May, 1957, the reasonable monthly rental value of said dwelling, premises and appliances therein, is, [66] and has been, \$64.98, no part of which sum has been paid by the defendant, although said defendant has been ready, willing and able at all times material to this action to pay said rental.

## IV.

That during the month of May, 1957, domestic water was furnished the defendant by the plaintiff at 1525 Hains Street, Richland, Washington, the reasonable rate being \$1.50, of which sum the de-



fendant has paid no part, although said defendant has been ready, willing and able at all times material to this action to pay said assessment.

#### V.

That on the 28th day of October, 1957, the plaintiff caused to be served upon the defendant a notice requiring said defendant to vacate the said premises at the expiration of the 20th day of November, 1957, that the said notice was given in compliance with the unlawful detainer statute of the State of Washington, to wit: R.C.W. 59.12.040 in that the notice referred to was served upon the defendant at 1525 Hains Street, Richland, Washington, by affixing a copy of said notice in a conspicuous place, to wit: on the door of said dwelling and by sending through the mail with proper postage prepaid, a copy addressed to the defendant at 1525 Hains Street, Richland, Washington; that neither the defendant nor any other person was found at the said premises at the time of said service.

#### VI.

That despite the request and notice to vacate said premises as hereinbefore set forth, defendant has failed and refused to vacate said premises as demanded; that defendant now owes to plaintiff rent from May 1, 1957, until such time as said premises are vacated, at the rate of \$64.98 per month and \$1.50 for water furnished in the month of May, 1957.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law: [67]

I.

This Court has jurisdiction over the subject matter and the parties to the action.

II.

Plaintiff at all times material to this action was and is the owner of that certain dwelling unit located at 1525 Hains Street, Richland, Washington.

III.

The notice to vacate given by the plaintiff to the defendant as referred to in Paragraph V of the Findings of Fact herein was proper notice and meets the requirement of the unlawful detainer statutes of the State of Washington, i.e., R.C.W. 59.12.040.

IV.

That the defendant is guilty of unlawful detainer of said premises; that the plaintiff is entitled to the issuance of a Writ of Restitution ousting the defendant from the possession of said premises and restoring possession thereof to the plaintiff.

V.

That the plaintiff should have judgment against the defendant for rent due from May 1, 1957, to the date of vacating said premises at the rate of \$64.98 per month, plus \$1.50 for domestic water furnished for the month of May, 1957, plus interest

at 6% from the date of judgment, plus costs and disbursements herein.

Done this 25th day of June, 1958.

/s/ SAM M. DRIVER,  
United States District Judge.

Presented by:

/s/ WILLIAM B. BANTZ,  
United States Attorney;

/s/ ROBERT L. FRASER,  
Assistant United States At-  
torney.

[Endorsed]: Filed June 25, 1958. [68]

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United States District Court for the Eastern  
District of Washington, Southern Division

Civil No. 1287

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY OZEROFF,

Defendant.

### JUDGMENT

This matter having come on for trial before the above-entitled Court on June 11, 1958, and the plain-

tiff being represented by William B. Bantz, United States Attorney for the Eastern District of Washington, and Robert L. Fraser, Assistant United States Attorney for said District, and the defendant being represented by Dean Loney, attorney of record, and the Court having considered evidence produced, arguments of counsel, and having made its findings of fact and conclusions of law, it is by the Court:

Ordered, Adjudged and Decreed that the plaintiff is awarded judgment against the defendant in the principal sum of \$900.39 of which sum \$898.89 represents rent due from May 1, 1957, to the date of judgment, and \$1.50 being an amount due for domestic water furnished the defendant by the plaintiff for the month of May, 1957.

It Is Further Ordered that a Writ of Restitution shall be issued by the Clerk of the above-entitled Court in the manner provided by law, restoring to the plaintiff that certain dwelling unit at 1525 Hains Street, Richland, Washington, and

It Is Also Further Ordered that the plaintiff recover its costs as taxed by the Clerk herein in the sum of \$54.10, and further, that this judgment shall bear interest at the rate of 6% per annum from this date until paid.

Dated this 25th day of June, 1958.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by:

/s/ ROBERT L. FRASER,  
Assistant United States At-  
torney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 25, 1958. [70]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the defendant, Mary Ozeroff, hereby appeals to the Court of Appeals for the Ninth Circuit from that certain judgment entered in the above-entitled case in favor of the United States of America, Plaintiff, on the 25th day of June, 1958.

POWELL & LONEY,

By /s/ DEAN W. LONEY,  
Attorneys for Defendant,  
Mary Ozeroff.

[Endorsed]: Filed August 12, 1958. [77]

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME  
FOR DOCKETING APPEAL

Comes Now the defendant, by and through her attorneys of record, Powell & Loney by Dean W. Loney and respectfully moves the above-entitled Court for an order extending the time for docketing the appeal in this action for a period of fifty (50) days from and after September 19, 1958.

This Motion is made for the reason that illness in the immediate family of the defendant prevents the presence of the defendant and the necessary steps being taken in the preparation of the appeal at this time.

POWELL & LONEY,

By /s/ DEAN W. LONEY.

[Endorsed]: Filed September 19, 1958. [78]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR  
DOCKETING APPEAL

This Matter having come on regularly in its order to be heard upon the request of the defendant for an additional extension of time within which to docket the appeal in the above-entitled cause, and the Court being duly and fully advised in the premises, Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that the time for docketing the appeal in the above-entitled cause is hereby extended for a period of fifty (50) days in accordance with the rules of court and the laws of the United States of America.

Done by the Court this 19th day of September, 1958.

s/ WILLIAM J. LINDBERG,  
Judge.

[Endorsed]: Filed September 19, 1958. [79]

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[Title of District Court and Cause.]

### CERTIFICATE OF THE CLERK

United States of America,  
Eastern District of Washington—ss.

I, Dorothy Moulton, Acting Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals filed in the above cause, as called for in Appellant's Designation filed on November 28, 1958,

Complaint.

Appearance of Powell & Loney, attorneys for deft.

Answer.

Defendant's Demand for Jury.

Request for Admissions.

Interrogatories to be answered by Defendant.  
Certificate of Service by mail of Request and  
Interrogatories.

Plaintiff's Answers to Interrogatories.

Defendant's Answer to Request for Admissions.

Defendant's Answer to Interrogatories.

Defendant's Interrogatories to Plaintiff.

Plaintiff's Motion for Summary Judgment with  
affidavit of service.

Court Reporter's transcript of testimony at trial.

Findings of Fact and Conclusions of Law.

Bill of Costs.

Judgment.

Writ of Restitution and Marshal's return.

Plaintiff's Exhibit No. 1.

Notice of Appeal.

Motion for Order extending time to docket ap-  
peal.

Order Extending time for docketing appeal.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand  
and affixed the seal of said District Court at Yakima  
in said district this 28th day of November, 1958.

DORTHY MOULTON,  
Acting Clerk, United States District Court, Eastern  
District of Washington.

[Seal] By /s/ THOMAS GRANGER,  
Deputy.



[Endorsed]: No. 16271. United States Court of Appeals for the Ninth Circuit. Mary Ozeroff, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal From the United States District Court for the Eastern District of Washington, Southern Division.

Filed: December 1, 1958.

Docketed: December 8, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 16271

MARY OZEROFF,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes Now the appellant and submits this her Statement of Points:

1. The Court erred in holding that the plaintiff-appellee was entitled to a judgment evicting defendant—appellant from the real property and premises involved in this case.

2. The Court erred in finding that defendant-appellant could not purchase the real property and home from the plaintiff-appellee.

3. The Court erred in holding the defendant-appellant did not have a priority to purchase the home in which she had been residing in Richland, Washington.

4. The Court erred in his interpretation and application of the statutes of the United States applicable to this case.

Dated this 22nd day of December, 1958.

POWELL & LONEY,

By /s/ JOHN A. WESTLAND,  
Attorneys for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 29, 1958.